

**MINUTES  
TEMPORARY HAWAII INTER-ISLAND  
FERRY OVERSIGHT TASK FORCE MEETING  
HONOLULU INTERNATIONAL AIRPORT  
INTER-ISLAND TERMINAL, 7<sup>TH</sup> FLOOR  
CONFERENCE ROOM C**

March 10, 2008

**Members Present**

Michael Formby (DOT designee)  
Sandra Kunimoto (Chair DOA)  
Russell Tsuji (DLNR designee)  
Michael Q. Y. Lau (AG designee)  
John Garibaldi (President, large capacity ferry vessel company)  
Dennis Chun (Kauai county)  
Randy Awo (Maui county)  
Colette Machado (Maui county)  
Sara Peck (Hawaii county)  
Lynn McCrory (Kauai county)

**Members excused**

Michael Matsukawa  
William Aila, Jr.  
Kauila Clark

**Other Attendees**

Margaret Ahn (Deputy AG)

**Call to Order**

Member Formby, as OTF facilitator, called the meeting to order at 1:02 p.m. Ten members present representing a quorum.

**Adoption of Minutes for February 13, 2008**

Member Tsuji and Member Kunimoto recused themselves from the adoption of minutes as they were not present at the February 13, 2008 meeting. Member McCrory moved that the minutes of February 13, 2008 be adopted. Member Chun seconded the motion which passed unanimously.

The following documents were distributed to all members:

Dept of Agriculture (DOA) powerpoint presentation  
Department of Land and Natural Resources (DLNR) – presentation by Russell Tsuji  
Email from Senator Chun Oakland with letter attached  
Email from Jennifer Bethel  
Whale avoidance log from HSF  
Financial information provided by DOT

**Department of Agriculture (DOA) Presentation by Domingo Cravalho, Jr.**

Powerpoint attached hereto.

Member McCrory inquired about the second snail found at the Kahului Harbor monitoring. The snail was found in the undercarriage of the car by HSF personnel and turned over to agricultural officials.

Member McCrory inquired about the Star Bulletin article. DOA is trying to work closely with federal counterparts, Customs and Border Protection (CBP). They are watching for items such as fruits and vegetables, cut flowers. Anything that is propagated will be referred to the U.S. Department of Agriculture. Inspections of harbors and airports are another area they are working together. DOA is looking for support on joint use at inspection facilities.

Member McCrory asked if DOA anticipates additional burden on the inspection process. DOA explained that as ridership increases, there will also be an expected increase in items being transferred/carried on the ferry. This would put added pressure on all parties involved in the screening process.

**Hawaii Superferry Presentation by Terry O'Halloran and Captain Adam Parsons**

Powerpoint attached hereto.

On April 23, HSF will be accepting reservations for transit on the ferry. The ferry is in dry dock longer than planned due to a tug collision with the side of vessel and damage to the vessel from the dry dock blocks. Nothing is wrong with the vessel, just unfortunate events that occurred immediately prior to and during dry docking. No whale strikes.

Member Formby inquired if HSF intends to disclose the information regarding damage during dry docking to the public, as this is a public meeting? HSF indicated that they wanted the OTF members to know what happened, but that due to third party considerations (legal rights and obligations); they had preferred not to go public prior to this time.

### **Whale sighting presentation by Captain Adam Parsons**

HSF has three (3) operators on the bridge: The Captain, First Officer and Chief Engineer. In addition, there are two dedicated whale observers. All five (5) are looking for whales. They use gyro stabilized binoculars which allow the observers to look farther out without the movement of the vessel disrupting their views. They typically see whales from 1000 yards to 4-5 miles depending on visibility and sea conditions. They can also see whales closer to the vessel. HSF has a GPS system on their ship and it is similar to GPS for your car. The system will give the vessel's latitudinal and longitudinal readouts and a graphic picture of the ship's location. The problem is that there is no interface between the ship and visually looking out of the ship at the whale(s). The only way to do it is a physical paper plot by one person on the deck. HSF records whale sightings. They are able to mark a chart where HSF sees the whales, although the location of the whale relative to the vessel is approximate. HSF is typically sighting whales, as expected, in the whale sanctuary and in waters less than 100 fathom feet. They could generate a standard diagram that would show what HSF observes on individual trips.

Member Machado raised a concern relating to trips scheduled during the evening hours in regards to the second voyage on Maui. HSF's plan regarding the second trip will be to go to Maui (from Honolulu) during the daylight hours and the return route (in the evening) to Honolulu will typically be north of Molokai and not in the whale sanctuary during whale season.

Member Awo inquired about night vision goggles and if they were effective. HSF replied that testing of the goggles was done by HSF and the goggles work well.

Member Machado referenced the letter from Senator Chun Oakland regarding the speed of the Superferry. Member Machado asked the Captain if over 15 knots (as referenced in the letter) is an unreasonable speed for the Superferry. Capt. Adams says that given the maneuvering and stopping capabilities of the Alakai, 25 knots is a reasonable number. He will never run the vessel in an unsafe manner.

Member Chun requested clarification about night vision in regards to the lookouts handheld versus the vessel's fixed system. The fixed system refers to a camera on the vessel.

Member Peck inquired about the Incidental Take Permit from NOAA. HSF responded that they are going through the process for the Incidental Take Permit (ITP). It is a very lengthy process and NOAA recommended some consultants and HSF has hired a consultant to assist them with the process.

Member Awo asked about the vessel being in dry dock and asked if HSF found anything in the engine intake screens (filter capture). HSF responded negative.

Member Formby inquired regarding the whale avoidance log. HSF responded that the only time they physically have to write the evasive action taken is if the whale is within 100 meters of the vessel and you do include a narrative description. Other than that it is a scatter log.

Member Peck called for a motion for HSF to create a diagram plotting the whale information gathered on the vessel (as briefed by Capt. Parsons) and report such data to the OTF. Member Awo seconded the motion.

Member Peck amended the motion for HSF to prepare a scatter log for whale observation data subject to the vessel's operational needs and requirements beginning December 1<sup>st</sup> and ending on May 31<sup>st</sup> of each year. Member Awo seconded the motion and it passed unanimously.

**DOCARE update.** Nothing new to add. HSF is in dry dock.

**Prosecutor's Office update.** Not available this month and DOT will request their attendance at the April 2008 meeting.

**Rapid Risk Assessment Presentation by Lesley Matsumoto, V.P. of Belt Collins**

One comment from an observer noted that they were impressed with HSF and their staff in being very vigilant in the sighting of whales.

Because the Superferry is in dry dock, Belt Collins anticipates observations will be done in mid-May. Sixty-eighty percent of the observations are complete. The report is anticipated to be complete sometime in June.

As of this day, nothing has been identified as a substantial risk to the resources. Vehicle count has been small, therefore traffic has been non-existent. The cultural resource specialist has not identified any major concerns. Observations of vehicular inspections and marine mammal procedures show that HSF is doing what they are required to do under Act 2 and the Executive Order. In regards to the marine mammal requirements, observers are impressed with the level of vigilance and responsiveness on the part of the observers, Captain and crew. In regards to the vehicle inspections and the marine mammal procedures, the observers did wonder if the vigilance demonstrated to date will continue past the rapid risk assessment observation period.

In the rapid risk assessment, the cultural practitioner observes and looks for things that might be culturally inappropriate. They observe the onboard cultural presentations and look for an appropriate depiction of Hawaii, its culture and cultural resources. The observers are also looking to see that HSF is doing what is required in the Executive Order. They are also checking to see if improvements to the presentation can be made. Rapid risk observers have suggested more emphasis on cleaning vehicle wheel wells and also cleaning the area under the hood towards the vehicle dash. The observers have also recommended the development of a survey which would ask passengers on the ferry as to

where they are going and what kind of plans they have on arrival. This data would aid HSF in preparing their educational and enforcement programs.

Draft EIS

1. Target date is October 2008
2. Announcement in OEQC Bulletin
3. 45-day comment period following the draft.

Informational Meetings

1. Twelve public meetings in March 2008
2. Consultation with agencies
3. Special Studies (traffic, marine mammals, etc.)

Public meetings are not required under Act 2 but the consultations are required. The public meetings are for public input/comment for the draft Act 2 EIS.

Copies of the Public Informational Meeting schedule relating to Act 2 were distributed to members, a copy of which is attached hereto. The meeting schedule was published on every island.

**Department of Land and Natural Resources Legislative update by Russell Tsuji**

Copy attached hereto.

Bills are:

HB 3176 HD 1 - RELATING TO ADMINISTRATIVE PENALTIES FOR DAMAGE TO STONY CORAL AND LIVE ROCK.

HB 3177 HD 1 - RELATING TO PENALTIES FOR VIOLATIONS WITHIN THE CONSERVATION DISTRICT.

HB3178 - RELATING TO CIVIL PENALTIES FOR VIOLATIONS ON PUBLIC LANDS

**Department of Agriculture Update by Sandra Kunimoto**

Copy attached hereto.

Bills are:

HB2501 HD 2 - RELATING TO BIOSECURITY

SB2850 SD2 - RELATING TO BIOSECURITY

HB2516 HD1 - RELATING TO BIOSECURITY

HB2843 HD2 – RELATING TO INVASIVE SPECIES

**DOT presentation of the Economic Benefit Cost Analysis by Michael D. Formby**

Copy attached hereto.

Member Formby discussed revenue paid to DOT by HSF through February 29, 2008.

**Community Impact Discussion:**

Member Machado questioned whether the OTF will have adequate time to do the final report to the Legislature due to the delayed schedule of the Superferry, Rapid Risk Assessment and the EIS. She also asked about the status of the amnesty boxes. Member Garibaldi said that HSF has installed the amnesty boxes.

Member Tsuji inquired about vehicle cleaning. HSF stated that all vehicles that require cleaning in order to board the vessel are directed to leave the premises. Cleaning does not occur on DOT property.

Member Peck had economic questions. She asked what the cost of OTF is and is it worthwhile to extend? Member Formby stated that pursuant to Act 2, DOT funds the costs of the OTF, including the travel costs of the members and facility costs. Members volunteer their time.

Member Machado inquired about the DOCARE positions and what DOT can do to help the legislative matters. Member Formby stated that the DOT always advocates in support of the DOA and DLNR legislative initiatives, including legislation to establish an inspection facility in Honolulu harbor and assess fees to fund the DOA effort.

Member Awo spoke about SB2154 – which creates a pilot community conservation program within the Maui office of the division of conservation and resource enforcement and appropriates funds for the funding of DOCARE. Discussion followed among members.

Member Kunimoto and Member Awo called for a motion for the OTF to support the DLNR's Supplemental Budget request specific to 15 DOCARE positions as specified in the budget. Lynn McCrory seconded the motion and it passed unanimously.

Member Peck called for a motion for Member Awo and Member Chun to be designated as OTF representatives to speak to President Hanabusa, Speaker Say and other legislators to convey OTF support for DOCARE positions. Member Machado seconded the motion and the motion passed unanimously.

**Public Comments:**

Kuheia Paracuelles, representing Mayor Tavares' office, inquired about the damage to HSF in dry-dock, the frequency of training refreshers, as well as the protocol of DOCARE officers. She also offered comments about seeing whales at night during night

time operations. A request was made to contact the Mayor if there is any change in the schedule for HSF to return to Maui.

Member Awo called for a motion to develop a formal agreement with HSF and DOCARE. Motion withdrawn.

Request was made to check with Member Matsukawa and Member Clark regarding their interest in serving on the OTF, as their attendance to date has been inconsistent.

**Next Meeting:** April 4, 2008, 1:00-4:00 p.m., at the Honolulu International Airport, Conference Room C, Interisland Terminal, 7<sup>th</sup> Floor.

By motion of member Tsuji, seconded by member Machado and passed unanimously, the OTF meeting adjourned at 3:58 p.m.

# Hawaii Superferry Operations

## February 2008 Update



Oversight Task Force Meeting  
March 10, 2008  
Honolulu, Oahu

Domingo Cravalho, Jr.

## **Conditions and protocols include:**

- Ocean Life and Marine Animals and Plants
- Water Resources and Quality
- Vehicular Traffic
- Public Safety and Security
- Invasive Species
- Cultural and Natural Resources
- Other (Miscellaneous Requirements)

# February 2008 Operations

- Monitoring period: February 4 thru 11
- Total of 8 days in operation
- Vessel dry docked for maintenance and repair

# Honolulu Harbor Monitoring

- 907 Passengers / 321 Vehicles
- 3 departures: 3 lots with 6 dead bees removed (no varroa mites)
- 3 departures: 5 lots without HDOA certification (seeds, asst. plants, impatiens plant)



# Kahului Harbor Monitoring

- 834 Passengers / 298 Vehicles
- 6 departures: 5 lots without HDOA certification (asst. plants, orchid, coconut), and 2 lots with certification
- 3 departures: 2 vehicles limited soil and sand removed, and 1 truck refused (Kipahulu)
- 2 departures: 2 lots with 9 dead bees removed (no varroa mites)
- 1 departure: 1 lot with 3 horses with HDOA certification
- 1 departure: Giant African Snail removed from under carriage of a vehicle (Makawao)



# PROTECT HAWAII





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## **Oversight Task Force Status Update**

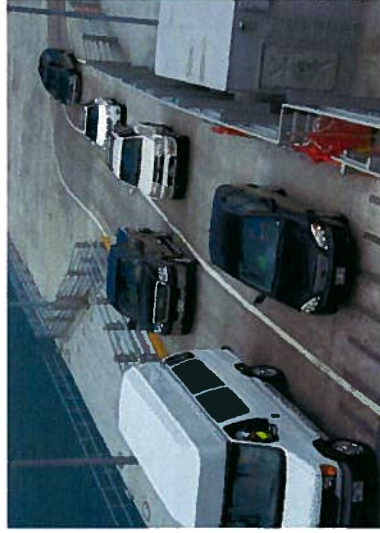
**March 10, 2008**



# Alakai Voyage Statistics

## Statistics of HSF voyages from February 1 – 29, 2008:

- 8 round trips between Oahu and Maui
- Alakai did not sail for 21 days (Feb 1-3 & Feb 12 - 29)
- Average PAX load from Oahu to Maui = 115 PAX / voyage
- Average PAX load from Maui to Oahu = 87 PAX / voyage
- Average vehicle load from Oahu to Maui = 40 / voyage
- Average vehicle load from Maui to Oahu = 39 / voyage

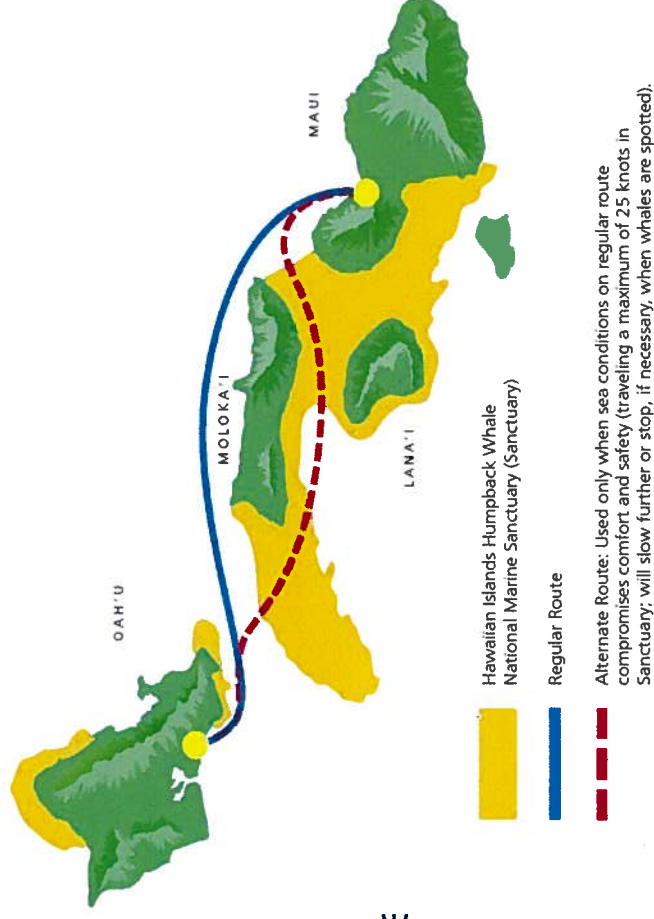




# Alakai Voyage Statistics

## Whale statistics for HSF voyages:

- All voyages used route North of Molokai
- Average of 31 whale sightings per day on 8 round trips
- There were no whale approaches (less than 100 yds.)





## Compliance Data – Honolulu Terminal

Examples of rule infractions at Honolulu Terminal:

- Muddy vehicles
- Dead bees in radiators
- Fishing net
- Frozen Shrimp
- Seeds under hood
- Tree branches





## Compliance Data – Kahului Terminal

Examples of rule infractions at Kahului Terminal:

- Muddy vehicles
- Plant without HDOA certificate of inspection
- Seeds under hood
- Dead bees from radiator grill
- Cut wood



# Whale Sighting & Location

## Whales Sighting

- Three vessel officers ( Master/Mate/Engineer)
- In addition, two dedicated whale lookouts
- Motion stabilized binoculars
- Recording total number of whale sightings

## Global Positioning System (GPS)

- Onboard GPS provides latitude/longitude of ship's location
- No onboard interface to determine latitude/longitude of whale locations

- Rough-position graphical plotting is possible
- Reporting is secondary consideration to vessel operational requirements
- Reporting represents only whales in close proximity to vessel's track line
- Reported positions of whales are only approximate estimates





"ChunOakland3 - Evelyn"  
<chunoakland3@capitol.hawaii.gov>

01/25/2008 09:59 AM

To <michael.formby@hawaii.gov>

cc "Sen. Suzanne Chun Oakland"  
<senchunoakland@Capitol.hawaii.gov>,  
<chunoakland@yahoo.com>

bcc

Subject FW: HSF Letter

History:

✉ This message has been replied to.

Dear Mr. Formby:

Sen. Chun Oakland is in receipt of a letter from marine biologist Alexander B. Leonard (see attachment) detailing some scientific facts and concerns of his regarding the operation of the Superferry. The Senator would like to submit this letter to you, as Superferry Task Force facilitator, for your consideration and deliberation in the task force proceedings.

If our office can assist in any way, please feel free to contact me.

Aloha,  
Evelyn Cho  
Legislative Researcher/  
Committee Assistant for  
Senator Suzanne Chun Oakland  
Hawaii State Capitol, Rm. 226  
Telephone: (808) 586-8431  
Facsimile: (808) 586-6131  
E-mail: chunoakland3@capitol.hawaii.gov

-----Original Message-----

From: Alex Leonard [mailto:alex@pahu-leka.net]  
Sent: Thursday, January 24, 2008 10:26 PM  
To: ChunOakland3 - Evelyn  
Subject: Re: HSF Letter

Thank you for contacting me regarding the letter I wrote to the Senator in October.

I have attached a copy to this e-mail, and hope it will be of use to the Task Force in their deliberations.

Please do not hesitate to contact me if I may be of further assistance,

Alex Leonard, Ph.D.

On 24 Jan 2008 at 11:26, ChunOakland3 - Evelyn wrote:

ALEXANDER B. LEONARD PH.D

Senator Suzanne Chun Oakland  
Hawaii State Capitol, Room 226  
415 South Beretania Street  
Honolulu, Hawaii 96813

October 25, 2007

Dear Senator Chun Oakland,

Aloha from Kona. As a Marine Biologist with a PhD degree from Scripps Institution of Oceanography, and based on my review of the extensive available scientific research on the subject, I find it has been shown convincingly that the faster a boat travels, the more likely it is that it will hit a whale. If the Hawaii Superferry is allowed to operate in Hawaiian waters at over 15 Knots, I believe that it is not a question of IF the Alakai will hit a whale, but rather of HOW MANY and HOW OFTEN.

I therefore cannot support the unfettered operation of Hawaii Superferry while an EIS is performed, as that EIS will unquestionably show that in order to comply with Marine Mammal protection laws, the Superferry will have to travel at speeds less than 13 Knots.

That said, if you must sign on to legislation that allows the Superferry to operate while an EIS is performed, that law must stipulate strict adherence to operational limits on speed.

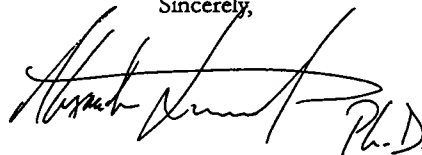
I also strongly recommend that it be required for all Superferry vessels (now and in the future) to be outfitted with pressure-sensing/vibration-sensing devices in their bows, as well as cameras to visualize and to continuously record the bow of the ship when it is in transit.

This is for two reasons:

- (1) a whale strike is not officially recorded as such unless it has been observed.  
A dying whale, bleeding from a blunt-impact blow, found ½-mile behind the ferry would not be counted as a whale strike under NOAA regulations – and thus could not be used as evidence of inadequate mitigation measures.
- (2) humans (passengers and crew) on board a vessel of this size and mass will not register the impact of the bow of the ship against a whale.  
There will be no "Bump".  
If the animal is submerged, or if the collision were to occur at night, then it is likely that the event will never be observed or properly recorded.

Please do not hesitate to contact me if I can provide further information.

Sincerely,



Jennifer K  
Bethel/DLNR/StateHiUS@ST  
ATEHIUS

02/15/2008 02:19 PM

To Deborah Kuwaye/HAR/HIDOT@HIDOT  
cc

bcc

Subject DOCARE request

Hi Debbie,

The Superferry Oversight Task Force asked for an outline of our supplemental budget request for DOCARE, and our enforcement legislation. Please find this information attached. Can you please distribute to all TF members per their request.

Please call me if you have any questions.

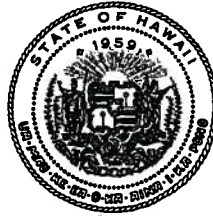


DLNR Enforcement Package.doc

DLNR Supplemental Budget Request related to DOCARE	Cost
New Division of Conservation and Resource Enforcement (DOCARE) positions: 11 Conservation and Resources Enforcement Officers 4 Clerk Typists	\$575,732
DOCARE new officer startup costs @ \$50,000 per officer	\$550,000
Personnel Management Specialist III (Department wide)	\$44,512
Account Clerk IV (Department wide)	\$34,812

Jennifer K. Bethel  
Project Coordinator  
Office of the Chairperson  
Department of Land and Natural Resources  
Phone: 587-0330 Fax: 587-0390

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT

ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**DLNR's 2008 LEGISLATIVE ENFORCEMENT PACKAGE  
STRENGTHEN THE STATE'S NATURAL RESOURCE PROTECTION LAWS**

**STOP THEFT OF NATURAL RESOURCES AND UNLAWFUL USE ON PUBLIC LANDS**

**HOUSE BILL: 3178/SENATE BILL: 3100**

**RELATING TO CIVIL PENALTIES FOR VIOLATIONS ON PUBLIC LANDS**

- Levies a fine on people stealing natural resources from public lands that is consistent with the market value of the natural resource taken.
- The current maximum fine of \$500 does not deter theft of a mature koa tree with a market value of \$50,000.
- Requires people damaging natural resources on public lands to restore the natural habitat.
- Increases civil fines for damage to natural resources or unlawful use of public lands:  
1<sup>st</sup> violation \$2,500; 2nd violation \$5,000; 3rd violation \$10,000. (Current fine is \$500)

**STOP DAMAGE TO STONY CORAL AND LIVE ROCK**

**HOUSE BILL: 3176/SENATE BILL: 3098**

**RELATING TO ADMINISTRATIVE PENALTIES FOR DAMAGE TO STONY CORAL AND LIVE CORAL**

- Impose administrative penalties for damage to stony coral and live rock on a per square meter basis.
- The current law imposes fines for the taking, killing, or injuring of aquatic life on a "per specimen basis." However, sometimes it's not possible to reconstruct the number of specimens damaged after they're destroyed.

**STOP VIOLATIONS OF CONSERVATION DISTRICT RESOURCE PROTECTIONS**

**HOUSE BILL: 3177/SENATE BILL: 3099**

**RELATING TO PENALTIES FOR VIOLATIONS WITHIN THE CONSERVATION DISTRICT**

- Increase the maximum fine for violations within the Conservation District to not more than \$10,000 per violation; and to assess fines based on damages to natural resources within the Conservation District.
- The current law allows for a maximum penalty of \$2,000. While this may deter some from committing minor violations, it is not a sufficient deterrent to major unauthorized actions such as structures, facilities, and single-family residences constructed; and the taking and destruction of native trees or plants or other natural resources.

*In all these bills, fines may only be imposed by the Land Board in a public hearing subject to contested case appeal, thereby protecting due process rights of all parties.*

# Marine Operations

# Whale Avoidance Log


Date:	01/01/08
Vessel:	Alakai
Master:	Parsons

<input checked="" type="checkbox"/>	Sanctuary Transit
<input type="checkbox"/>	Approach
<input type="checkbox"/>	Collision

Sanctuary Transit						
Interest	Passenger safety and comfort and vessel safety					
Speed	under 25 knots					
Time	0709	Location	21-07.2N	157-35.2W	Course	080
Time	0758	Location	21-01.0N	157-20.0W	Course	090
Time	0823	Location	21-01.0N	157-00.1W	Course	090
Time	0910	Location	21-04.3N	156-39.5W	Course	050
Time		Location			Course	
Time		Location			Course	
Evasive Action: Minor course adjustments to avoid approach.						

Approach (less than 100 meters)						
Director of Marine Operations Contacted			N/A			
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Evasive Action/Detail						

Collision						
Director of Marine Operations Contacted			N/A			
Time		Location			Course	
Detail/Damage or Injury to Whale						

Certification		
Master's Signature		
 J.A. PARSONS 1.16.08		

# Marine Operations

# Whale Avoidance Log


Date:	01/03/08
Vessel:	Alakai
Master:	Parsons

☒ Sanctuary Transit  
☐ Approach  
☐ Collision

Sanctuary Transit						
Interest	Passenger safety and comfort and vessel safety					
Speed	under 25 knots					
Time	0704	Location	21-07.5N	157-35.5W	Course	103
Time	0756	Location	21-01.1N	157-19.0W	Course	090
Time	0831	Location	21-00.6N	157-01.1W	Course	090
Time	0904	Location	21-04.7N	156-39.9W	Course	055
Time		Location			Course	
Time		Location			Course	
Evasive Action: N/A						

Approach (less than 100 meters)						
Director of Marine Operations Contacted			N/A			
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Evasive Action/Detail						

Collision						
Director of Marine Operations Contacted			N/A			
Time		Location			Course	
Detail/Damage or Injury to Whale						

Certification	
Master's Signature	
 <span style="float: right; margin-right: 50px;">01-16-08</span>	

# Marine Operations

# Whale Avoidance Log

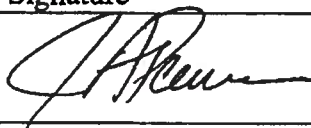
Date:	01/07/08
Vessel:	Alakai
Master:	Parsons

☐ Sanctuary Transit  
☒ Approach  
☐ Collision

Sanctuary Transit						
Interest	N/A					
Speed	other -					
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Evasive Action: N/A						

Approach (less than 100 meters)						
Director of Marine Operations Contacted				Yes		
Time	0941	Location	20-58.8N	156-28.2W	Course	180
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Evasive Action/Detail						
Vessel was approaching Kahului Harbor at 25 knots when a whale surfaced approximately 120 yards ahead. Vessel came to full stop with Closest Point of Approach (CPA) approx. 80 yards.						

Collision						
Director of Marine Operations Contacted				N/A		
Time		Location			Course	
Detail/Damage or Injury to Whale						

Certification	
Master's Signature	
	

# Marine Operations

# Whale Avoidance Log


Date:	1/13/08
Vessel:	Alakai
Master:	Curtis

☒ Sanctuary Transit  
☐ Approach  
☐ Collision

Sanctuary Transit						
Interest	Passenger safety and comfort and vessel safety					
Speed	under 25 knots					
Time	0715	Location	21-09.7N	157-28.8W	Course	135
Time	0758	Location	21-01.5N	157-13.3W	Course	090
Time	0817	Location	20-59.8N	157-02.9W	Course	045
Time	0915	Location	21-03.6N	156-39.3W	Course	045
Time		Location			Course	
Time		Location			Course	
Evasive Action: Minor course adjustments to avoid approach.						

Approach (less than 100 meters)						
Director of Marine Operations Contacted			N/A			
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Evasive Action/Detail						

Collision						
Director of Marine Operations Contacted			N/A			
Time		Location			Course	
Detail/Damage or Injury to Whale						

Certification	
Master's Signature	
 Allen J. CURTIS JR 1/13/08	

# Marine Operations

# Whale Avoidance Log

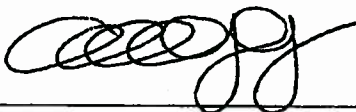
Date:	1/14/08
Vessel:	Alakai
Master:	Curtis

☒ Sanctuary Transit  
☐ Approach  
☐ Collision

Sanctuary Transit						
Interest	Passenger safety and comfort and vessel safety					
Speed	under 25 knots					
Time	0713	Location	21-04.5N	157-39.4W	Course	130
Time	0737	Location	20-56.6N	157-32.7W	Course	090
Time	0832	Location	21-00.0N	157-01.2W	Course	060
Time	0923	Location	21-04.4N	156-39.4W	Course	045
Time		Location			Course	
Time		Location			Course	
Evasive Action: Minor course adjustments to avoid approach.						

Approach (less than 100 meters)						
Director of Marine Operations Contacted		N/A				
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Evasive Action/Detail						

Collision						
Director of Marine Operations Contacted		N/A				
Time		Location			Course	
Detail/Damage or Injury to Whale						

Certification	
Master's Signature	
 Allen J. CURTIS JR 1/14/08	

# Whale Avoidance Log

## Marine Operations

Date:	1/22/08
Vessel:	Alakai
Master:	Curtis

- ☒ Sanctuary Transit  
☐ Approach  
☐ Collision

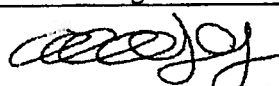
Sanctuary Transit						
Interest	Passenger safety and comfort					
Speed	under 25 knots					
Time	0729	Location	21-10.1N	157-23.8W	Course	141.0T
Time	0802	Location	21-01.6N	157-13.8W	Course	098.0T
Time	0826	Location	21-00.6N	157-00.9W	Course	062.0T
Time	0917	Location	21-05.5N	156-19.9W	Course	090.0T
Time		Location			Course	
Time		Location			Course	

Evasive Action: Minor course adjustments to avoid approach.

Approach (less than 100 meters)						
Director of Marine Operations Contacted				N/A		
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	

Evasive Action/Detail

Collision						
Director of Marine Operations Contacted				N/A		
Time		Location			Course	
Detail/Damage or Injury to Whale						

Certification	
Master's Signature	
 Allen J. CURTIS JR. 1/22/2008	

# Marine Operations

# Whale Avoidance Log

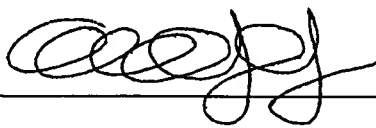
Date:	1/25/08
Vessel:	Alakai
Master:	Curtis

☐ Sanctuary Transit  
☒ Approach  
☐ Collision

Sanctuary Transit						
Interest	N/A					
Speed	other -					
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Evasive Action: N/A						

Approach (less than 100 meters)						
Director of Marine Operations Contacted				Yes		
Time	0951	Location	20-57.1N	156-28.2W	Course	180
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Time		Location			Course	
Evasive Action/Detail						
Vessel spotted a whale 125 yards off the port bow. We were making our approach to Kahului harbor slightly below 25kts within the 100 fathom curve Vessel turned to starboard and reduced speed as soon as the whale was sighted. Whale passed 70 yards down the port side of the vessel and cleared the stern.						

Collision						
Director of Marine Operations Contacted				N/A		
Time		Location			Course	
Detail/Damage or Injury to Whale						

Certification	
Master's Signature	
 1/24/2008 Allen J Curtis Jr.	

### **DOT-HSF Payments as of February 29, 2008**

Percentage of Gross Receipts (MAG):	\$325,835.23	(Note 1)
Dockage:	\$ 9,343.75	
Miscellaneous fees and charges:	\$ 2,987.50	(Note 2)
Rents:	\$145,594.32	(Note 3)
Total:	\$483,760.80	

1. The Operating Agreement requires HSF pay, on a monthly basis, the greater of the total of passenger fees, vehicle fees and 1% of adjusted gross receipts or a minimum monthly guarantee of \$191,667.00. From the commencement of service through February 29, 2008, HSF has paid the State a total of \$325,835.23 in accordance with the Operating Agreement.
2. Includes parking fees and ground transportation permit fees.
3. Revocable permits have been issued to HSF for exclusive use space for office, storage, warehouse and open paved space.

**Public Informational Meetings**  
**Act 2 Environmental Impact Statement (EIS)**

**Harbor Improvements for Large-Capacity Ferry Vessel Company**

The State of Hawai'i Department of Transportation (DOT) will hold public informational meetings on the EIS required by S.B.1 S.D.1 Act 2, Relating to Transportation, which was promulgated on November 2, 2007. The EIS will address secondary impacts associated with the Hawaii Superferry.

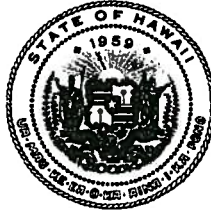
- March 11, 2008: *Tue* Kaunakakai Elementary School (6 to 9 p.m.)  
30 Ailoa Street • Kaunakakai, Moloka'i, Hawai'i 96748
- March 14, 2008: *Fri* Wallace Rider Farrington High School Auditorium  
1564 North King Street • Honolulu, Hawai'i 96817  
(2 to 5 p.m. and 6 to 9 p.m.)
- March 17, 2008: *Mon* Henry Perrine Baldwin High School Auditorium  
1650 Ka'ahumanu Avenue • Wailuku, Maui 96793  
(2 to 5 p.m. and 6 to 9 p.m.)
- March 19, 2008: *Wed* Kaua'i Community College Performing Arts Center  
3-1901 Kaumuali'i Highway • Lihue, Kaua'i 96766  
(2 to 5 p.m. and 6 to 9 p.m.)
- March 24, 2008: *Mon* Hilo High School Auditorium  
556 Waianuenue Avenue • Hilo, Hawai'i 96720  
(2 to 5 p.m. and 6 to 9 p.m.)
- March 27, 2008: *Th* Kealakehe High School *captiva*  
74-5000 Puohulihuli Street • Kailua-Kona, Hawai'i 96740  
(2 to 5 p.m. and 6 to 9 p.m.)
- March 31, 2008: *Mon* Lana'i High School (6 to 9 p.m.)  
555 Fraser Ave • Lana'i City, Hawai'i 96763

Information about the Act 2 EIS process, such as schedule and resources and issues to be evaluated, will be shared. Opportunities for providing input pertaining to additional resources and issues that should be addressed will be provided.

Requests for further information about these meetings should be directed to:

Ms. Lesley A. Matsumoto  
Belt Collins Hawaii Ltd.  
Telephone: (808) 521-5361

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
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CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON  
OF THE BOARD OF LAND AND NATURAL RESOURCES**

**on House Bill 3176 House Draft 1 -RELATING TO ADMINISTRATIVE PENALTIES  
FOR DAMAGE TO STONY CORAL AND LIVE ROCK**

**BEFORE THE HOUSE COMMITTEE ON  
FINANCE**

**February 22, 2008**

House Bill 3176 House Draft 1 would authorize the Board of Land and Natural Resources (Board) to impose administrative penalties for damage to stony coral and live rock based on area, using an accepted economic valuation method to gauge the relative value of the damaged coral area, in addition to a penalty on a per specimen basis. The Department of Land and Natural Resources (Department) opposes House Draft 1 and instead, strongly supports the original version of this Administrative bill.

First, requiring an economic valuation will limit the discretion of the Board in regard to penalties. Specifically, it would prevent the Board from granting more lenient fines in cases where damage was inadvertent and the operator made good faith attempts to prevent it; and could mandate smaller fines in cases where a violator was reckless or intentional in their actions. The reason the Board is currently given such flexibility in every other case where the statutes impose civil fines is to allow for accommodations like this to be made. People who feel their due process was compromised may seek a contested case hearing, and then subsequently appeal to court. The current system thus ensures appropriate checks and balances on the Board's discretion, without the need for an economic valuation.

Second, this is a penalty bill not a mitigation bill. A fine is not based on an economic valuation (which is used to argue for damages relative to restoration costs or compensatory mitigation), but is instead intended to serve as a significant penalty to responsible parties for illegal actions and to encourage compliance with the law on the part of the greater public. For example, when one receives a parking ticket for \$40, the amount of penalty is not based on the size of the parking space that was illegally occupied or on the value of the real estate involved; on the contrary, the fine is designed to be a reasonable punishment for the violation and a deterrent to future violations.

The fine for coral and live rock was to be based, in part, on similar fines already in statute for threatened and endangered aquatic life. Part of the rationale for this is that in addition to monk seals and sea turtles, the only other marine life completely protected against take, damage or harm in Hawaii is live coral and live rock, hence it is logical that the penalties for take of both be

equivalent. A similar threatened and endangered species statute protecting plants allows for a penalty ranging from \$5,000 up to \$10,000, depending on whether a plant is listed as threatened or endangered, further highlighting how the proposed penalty in our original bill is consistent with current precedent.

If one needs to rationalize via an economic argument a penalty of \$5,000 per square meter for coral and live rock, then this raises the specter of also having to rationalize the penalty amounts for sea turtles and monk seals, or for each listed plant under Forestry and Wildlife's jurisdiction. If this line of reasoning is taken to an extreme, the Department might eventually need to provide an economic justification for any penalty imposed for take, harm or death of a natural resource. While this is important when assessing damage for recovery relative to funding mitigation or restoration projects, it is clearly not a logical direction from a precedent perspective for determining fines.

At the present time, Section 187A-12.5, Hawaii Revised Statutes (HRS), authorizes the Board to impose administrative fines for the taking, killing, or injuring of aquatic life on a "per specimen" basis. This approach has been and remains appropriate for situations involving fisheries violations.

However, section 187A-12.5, HRS, does not apply well to environmental damage or to the breakage of living coral colonies and live rock, especially in circumstances involving vessel groundings and other large-scale resource damage incidents. In such cases it is difficult to determine the number of specimens that might have been originally present once they have been crushed or destroyed in such a grounding event. This allows parties a way to challenge the Department's damage estimates and the associated penalties proposed.

By way of example, the recent grounding of a charter dive vessel in the Molokini Marine Life Conservation District damaged many hundreds of coral colonies, but conducting damage assessments to determine the total number of injured specimens has been time consuming and difficult to quantify. The Department's evaluation by the number of coral heads damaged has been challenged by the responsible party. An area-based approach would have been far more practical in this situation, had this been available to the Department. The measure as proposed would therefore facilitate prosecution of such incidents, and reduce the possibility of challenges to such enforcement.

The State has a public trust obligation and must remain vigilant in its duty to protect Hawaii's natural resources for the benefit of all of its residents and future generations. The Department finds that in recent years, there has been an increase in the intentional violation of and blatant disregard for state natural resource laws and rules. Consequently, the State has been under considerable strain in fulfilling that obligation, due to ineffective enforcement tools, limited financial resources, and a shortage of enforcement personnel.

Examples of such behavior include unauthorized commercial activities on public beaches; operation of all-terrain vehicles on unencumbered or other restricted public lands; damage to archeological, historical or geologic features; destruction, defacing or removal of native trees or plants or other natural resources on public lands; damage to stony coral and live rock; the unauthorized grubbing and grading of conservation-zoned lands; construction of unauthorized single family residences or similar major structures within the Conservation District; and the construction of unauthorized seawalls.

In order to bring more severity to this issue, the Department is proposing three pieces of enforcement legislation, House Bill 3177 - RELATING TO PENALTIES FOR VIOLATIONS WITHIN THE CONSERVATION DISTRICT, House Bill 3178 - RELATING TO CIVIL PENALTIES FOR VIOLATIONS ON PUBLIC LANDS, and this measure, House Bill 3176 - RELATING TO ADMINISTRATIVE PENALTIES FOR DAMAGE TO STONY CORAL AND LIVE ROCK to deter unlawful behavior by increasing penalties for violations of the State's natural resources laws and rules.

Coral reefs are sacred to the Native Hawaiian people, and are signature ecosystems of the Hawaiian Islands. Their living substrate (coral, live rock, and calcareous algae) provides the food and shelter for the myriad of native and endemic reef organisms that populate the State's coastal waters. Hawaii's coral reefs also serve as the backbone for a large part of the State's vibrant marine tourism industry, creating many of our world-famous wave breaks, providing subsistence, recreational, and commercial fishing for residents and visitors alike, and maintaining a marine species endemism rate that ranks among the highest in the world. They also serve an increasingly important role in terms of natural defenses against rising sea levels resulting from global climate change.

In summary, the original bill would authorize the Board to assess administrative penalties for damage to stony coral and live rock on an area basis in addition to a per specimen basis, at the Board's discretion. This will result in more effective and appropriate financial redress in cases of damage to the coral reefs that are vital to the State's ecological and economic security. By contrast, the amended version of the bill would reduce the Board's discretion, and introduce an inappropriate rationale into the process of determining fines for resource damage. The Department therefore opposes House Draft 1, and urges the Committee to restore the originally proposed language of this Administrative bill.

AR  
DOCARE  
LT 7/29

STAND. COM. REP. NO. 832 -08

Honolulu, Hawaii

Feb 29, 2008

RE: H.B. No. 3176  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fourth State Legislature  
Regular Session of 2008  
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No.  
3176, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO ADMINISTRATIVE PENALTIES FOR  
DAMAGE TO STONY CORAL AND LIVE ROCK,"

begs leave to report as follows:

The purpose of this bill is to provide additional protections  
to our valuable reefs by establishing a more appropriate means of  
quantifying damage to living coral colonies and live rock.  
Specifically, this bill directs the Board of Land and Natural  
Resources to impose administrative penalties for damages to stony  
coral and live rock, using an accepted economic valuation method  
to gauge the relative value of the particular area damaged.

The Ocean Tourism Coalition and a concerned individual  
testified in support of this bill. The Department of Land and  
Natural Resources opposed this measure. The Office of Hawaiian  
Affairs, The Nature Conservancy, and several concerned individuals  
offered comments.

As affirmed by the record of votes of the members of your  
Committee on Finance that is attached to this report, your  
Committee is in accord with the intent and purpose of H.B. No.  
3176, H.D. 1, and recommends that it pass Third Reading.

HB3176 HD1 HSCR FIN HMS 2008-2458



State of Hawaii  
House of Representatives  
The Twenty-fourth Legislature

**HSCR 832-08**

**Record of Votes of the Committee on Finance**

<b>Bill/Resolution No.:</b> HB 3176	<b>Committee Referral:</b> FIN	<b>Date:</b> 2-22-2008		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
<b>The recommendation is to:</b> <input checked="" type="checkbox"/> Pass, unamended (as is) <input type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
<b>FIN Members</b>	<b>Ayes</b>	<b>Ayes (WR)</b>	<b>Nays</b>	<b>Excused</b>
1. OSHIRO, Marcus R. (C)	✓			
2. LEE, Marilyn B. (VC)	✓			
3. AWANA, Karen Leinani	✓			
4. BELATTI, Della Au	✓			
5. BROWER, Tom	✓			
6. CARROLL, Mele	✓			
7. HANOHANO, Faye P.	✓			
8. HAR, Sharon E.				✓
9. KARAMATSU, Jon Riki	✓			
10. MAGAOAY, Michael Y.	✓			
11. MANAHAN, Joey	✓			
12. MIZUNO, John	✓			
13. NAKASONE, Bob				✓
14. RHOADS, Karl	✓			
15. SAGUM, Roland D., III	✓			
16. TOKIOKA, James Kunane	✓			
17. MEYER, Colleen Rose	✓			
18. PINE, Kymberly Marcos	✓			
19. WARD, Gene, Ph.D.	✓			
<b>TOTAL (19)</b>	17	0	0	2
<b>The recommendation is:</b> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <div style="text-align: center; font-size: 0.8em;">committee acronym(s)</div>				
<b>Vice Chair's or designee's signature:</b> <span style="font-family: cursive; font-size: 1.2em; margin-left: 50px;">Maif B Lee</span>				
<b>Distribution:</b> Original (White) – Committee      Duplicate (Yellow) – Chief Clerk's Office				

HOUSE OF REPRESENTATIVES  
TWENTY-FOURTH LEGISLATURE, 2008  
STATE OF HAWAII

  
H.B. NO. 3176

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## A BILL FOR AN ACT

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*RELATING TO ADMINISTRATIVE PENALTIES FOR DAMAGE TO STONY CORAL AND  
LIVE ROCK.*

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. Section 187A-12.5, Hawaii Revised Statutes, is amended to read as follows:

"[+]§187A-12.5[+] **General administrative penalties.** (a)

Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines, fees, and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 5 of title 12 or any rule adopted thereunder.

(b) For violations involving threatened or endangered species, the administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$5,000;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$10,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$15,000.

(c) For all other violations the administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$1,000;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$2,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$3,000.

(d) In addition to subsection (b), a fine of up to \$5,000 may be levied for each specimen of threatened or endangered aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder.

(e) In addition to subsection (c), a fine of up to \$5,000 per square meter of area damaged may be levied for damaging or breaking stony coral or live rock.

~~[(e)]~~ (f) In addition to subsection (c), a fine of up to \$1,000 may be levied for each specimen of all other aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder.

~~[(f)]~~ (g) Any criminal penalty for any violation of subtitle 5 of title 12 or any rule adopted thereunder shall not be deemed to preclude the State from recovering additional administrative fines, fees, and costs, including attorney's fees and costs.

(h) For the purposes of this section:

"Breaking" means hitting or applying sufficient force to reduce to smaller pieces or to crack without actually separating into pieces.

"Damaging" means causing extensive injury resulting in irreparable harm or death.

"Live rock" means any rock or coral to which marine life is visibly attached.

"Stony coral" means any of a variety of invertebrate species belonging to the order *Scleractinia* characterized by having a hard, calcareous skeleton that are native to the Hawaiian Islands."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: \_\_\_\_\_

BY REQUEST

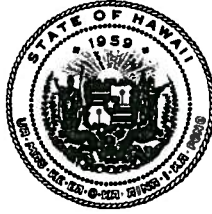
**Report Title:**

*Administrative penalties; Stony coral and live rock damage.*

**Description:**

*Imposes administrative fines for damage to stony coral and live rock based on the amount of area damaged.*

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON  
OF THE BOARD OF LAND AND NATURAL RESOURCES**

**on House Bill 3177, House Draft 1 - Relating To Penalties For Violations Within The  
Conservation District**

**BEFORE THE HOUSE COMMITTEE ON  
FINANCE**

**February 22, 2008**

House Bill 3177, House Draft 1 is an Administration bill, which proposes to increase the maximum fine for violations within the Conservation District from not more than \$2,000 per violation to not more than \$10,000 per violation; and to authorize the Board of Land and Natural Resources (Board) to assess fines based on damages to natural resources within the Conservation District. The Department of Land and Natural Resources (Department) notes that the House Draft 1 of this measure incorporates a defective effective date of January 1, 2112. As such, the Department strongly supports the original version of this Administration measure.

The State has a public trust obligation and must remain vigilant in its duty to protect Hawaii's natural resources for the benefit of all of its residents and future generations. The Department finds that in recent years, there has been an increase in the intentional violation of and blatant disregard for state natural resource laws and rules. Consequently, the State has been under considerable strain in fulfilling that obligation, due to ineffective enforcement tools, limited financial resources, and a shortage of enforcement personnel.

Examples of such behavior include unauthorized commercial activities on public beaches; operation of all-terrain vehicles on unencumbered or other restricted public lands; damage to archeological, historical or geologic features; destruction, defacing or removal of native trees or plants or other natural resources on public lands; damage to stony coral and live rock; the unauthorized grubbing and grading of conservation-zoned lands; construction of unauthorized single family residences or similar major structures within the Conservation District; and the construction of unauthorized seawalls.

In order to bring more severity to this issue, the Department is proposing three pieces of enforcement-legislation, House Bill 3176 (Relating To Administrative Penalties For Damage To Stony Coral And Live Rock), House Bill 3178 (Relating To Civil Penalties For Violations On Public Lands), and this measure House Bill 3177, to deter unlawful behavior by imposing harsher penalties on parties that damage natural resource important to the people of Hawaii.

The Conservation District contains important lands and natural resources essential to preservation of the State's fragile ecosystems and the sustainability of its water supply. The Department has recently experienced a rash of violations involving the unauthorized use of conservation-zoned lands throughout the State. This is likely the result of several misperceptions and socio-economic conditions: (1) That it is cheaper to deal with the consequences of the enforcement process than to deal with the permit process; (2) It appears that many large parcels of conservation-zoned land have recently been purchased by individuals or corporations who either do not care about conservation restrictions or who fail to educate themselves about these restrictions; and (3) As urban and agriculture lands approach build out, there is increased pressure to develop conservation-zoned lands.

Section 183C-7(b), Hawaii Revised Statutes, allows for a maximum penalty of \$2,000 for a single violation. While this may deter some from committing minor Conservation District violations, it is not a sufficient penalty to deter major unauthorized actions such as the construction of major structures and facilities, single-family residences, and the taking and destruction of native trees or plants or other natural resources in the Conservation District without first obtaining permits. In Fiscal Year 2007 for example, the Department initiated over 90 enforcement cases and collected approximately \$60,000 in penalties.

Of particular concern to the Department are actions such as grading in the Conservation District. Under the existing statute, the Department can assess up to \$2,000 for a grading violation, whether 10,000 square feet or 10 acres were graded. The Department has processed a number of cases over the past two years in which the inability to treat these cases differently became an issue.

Lastly, for damage to natural resources, the bill provides the Board with some leeway in determining an appropriate fine by considering the market value of the natural resource damaged or taken, and such factors as the loss of the natural resource to its natural habitat and environment.

The Department strongly supports this Administration legislation in its current form.

CCL  
DOCARE  
LT 2/15

STAND. COM. REP. NO. 534 -08

Honolulu, Hawaii

Feb 15, 2008

RE: H.B. No. 3177  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fourth State Legislature  
Regular Session of 2008  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 3177 entitled:

"A BILL FOR AN ACT RELATING TO PENALTIES FOR VIOLATIONS  
WITHIN THE CONSERVATION DISTRICT,"

begs leave to report as follows:

The purpose of this bill is to protect our natural resources and deter unlawful acts on conservation land by:

- (1) Raising the maximum fine from \$2,000 to \$10,000 for each violation of the laws and rules governing conservation districts; and
- (2) Allowing the Board of Land and Natural Resources (Board) to set, charge, and collect the fines based on the value of the natural resource that is damaged, the market value of the natural resource damaged, and any other factor deemed appropriate by the Board.

The Department of Land and Natural Resources, Office of Hawaiian Affairs, The Nature Conservancy of Hawaii, and Sierra Club, Hawaii Chapter, supported this bill.



HSCR 534-08

Bill/Resolution No.: HB3177 (HSCR186-08)		Committee Referral: WLH, JUD, FIN		Date: <b>2/12/08</b>
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to:				
<input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) ! <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
JUD Members	Ayes	Ayes (WR)	Nays	Excused
1. WATERS, Tommy (C)	/			
2. OSHIRO, Blake K. (VC)	/			
3. EVANS, Cindy	/			
4. GREEN, Josh, M.D.	/			
5. ITO, Ken	/			
6. LUKE, Sylvia	/			
7. McKELVEY, Angus L.K.	/			
8. MORITA, Hermina M.	/			
9. SONSON, Alex M.				/
10. SOUKI, Joseph M.	/			
11. TSUJI, Clift	/			
12. YAMANE, Ryan I.	/			
13. YAMASHITA, Kyle T.	/			
14. MARUMOTO, Barbara C.	/			
15. PINE, Kymberly Marcos	/			
16. THIELEN, Cynthia				/
TOTAL (16)	<b>14</b>			<b>2</b>
The recommendation is:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature:				
Distribution:	Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office			

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# A BILL FOR AN ACT

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RELATING TO PENALTIES FOR VIOLATIONS WITHIN THE CONSERVATION  
DISTRICT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Section 183C-7, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3       "(b) Any person violating this chapter or any rule adopted  
4 in accordance with this chapter shall be fined not more than  
5 ~~[\$2,000]~~ \$10,000 per violation in addition to administrative  
6 costs ~~[and]~~, costs associated with land or habitat restoration,  
7 ~~[or both, if required,]~~ and damages to ~~[state]~~ public land ~~[r]~~ or  
8 natural resources, or any combination thereof. After written or  
9 verbal notification from the department, wilful violation of  
10 this ~~[section]~~ chapter or any rule adopted in accordance with  
11 this chapter may incur an additional fine of up to ~~[\$2,000]~~  
12 \$10,000 per day per violation for each day in which the  
13 violation persists. The board may set, charge, and collect the  
14 fine based on the value of the natural resource that is damaged,  
15 the market value of the natural resource damaged, and any other  
16 factor it deems appropriate, such as the loss of the natural  
17 resource to its natural habitat and environment and the cost of



**Report Title:**

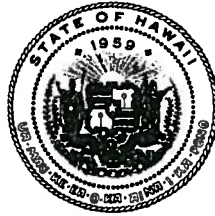
Conservation District Penalties

**Description:**

Increases the maximum penalty for violations within the Conservation District; authorizes the Board of Land and Natural Resources to assess fines based on damages to natural resources within the Conservation District and other factors deemed appropriate by the Board. (HB3177 HD1)



LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON  
OF THE BOARD OF LAND AND NATURAL RESOURCES**

**On HOUSE BILL 3178 - RELATING TO CIVIL PENALTIES FOR VIOLATIONS  
ON PUBLIC LANDS**

**BEFORE THE HOUSE COMMITTEE ON  
FINANCE**

**February 21, 2008**

House Bill 3178 is an Administration bill which proposes to increase civil penalty fine amounts for violations on public lands and to clarify penalties for encroachment on public lands. The Department of Land and Natural Resources (Department) strongly supports this measure.

The State has a public trust obligation to protect Hawaii's natural resources for the benefit of all of its residents and future generations. There has been an increase in the intentional violation of and blatant disregard for state natural resources laws. Consequently, the Department has been under considerable strain in fulfilling that obligation, due to ineffective enforcement tools, limited resources, and a shortage of enforcement personnel.

Examples of such behavior include unauthorized commercial activities on public beaches; operation of all-terrain vehicles on unencumbered or other restricted public lands; damage to archeological, historical or geologic features; destruction, defacing or removal of native trees or plants or other natural resources on public lands; damage to stony coral and live rock; the unauthorized grubbing and grading of conservation-zoned lands; construction of unauthorized single family residences or similar major structures within the Conservation District; and the construction of unauthorized seawalls.

In order to bring more severity to this issue, the Department is proposing three pieces of enforcement-legislation, House Bill 3176 (RELATING TO ADMINISTRATIVE PENALTIES FOR DAMAGE TO STONY CORAL AND LIVE ROCK), House Bill 3177 (RELATING TO PENALTIES FOR VIOLATIONS WITHIN THE CONSERVATION DISTRICT), and this measure, House Bill 3178 (RELATING TO CIVIL PENALTIES FOR VIOLATIONS ON PUBLIC LANDS), to deter unlawful behavior by increasing penalties for violations of the State's natural resources laws and rules.

The current maximum \$500 fine for violations on public lands has proven to be an ineffective deterrent to unauthorized activity on public lands and damage, destruction or theft of the State's natural resources. Unauthorized commercial ventures such as surf instruction schools, diving and snorkeling tours, and other ocean recreation related operations can conservatively generate

\$50,000 per month in revenues. Theft and sale of koa trees and other valuable natural resources can produce tens if not hundreds of thousands of dollars in illicit profits for unscrupulous violators. Given such lucrative incentives, violators brazenly disregard the State's natural resource laws since the risk of incurring a maximum fine of \$500, even if compounded with the cumulative daily fines when appropriate, is inconsequential.

The existing statutory remedy for encroachment on public lands requires the violator to restore public land, if altered, to its original condition and assume the costs thereof, but does not require the payment of administrative costs and damages incurred by the Department. Other infractions of Chapter 171, Hawaii Revised Statutes, or any rules adopted thereunder for which violation a penalty is not otherwise provided, require the violator to pay for administrative costs and damages incurred by the Department. This bill corrects that inconsistency by requiring the violator who encroaches on public land to be liable for administrative costs incurred by the Department and for payment of damages.

The bill also provides the Board of Land and Natural Resources with some leeway in determining an appropriate fine for theft and damage to natural resources by considering the market value of the natural resource damaged or taken, and such factors as the loss of the natural resource to its natural habitat and environment.

This bill provides the Department with more effective tools to enforce violations of our natural resources laws and maximize the impact of the State's limited resources and enforcement personnel. Long term impacts of the bill include the enhancement of public access to public areas such as beaches by the removal of unauthorized operations crowding such areas, and the promotion of public safety by the reduction in unregulated and unsafe activities occurring in public areas.

LD  
DOCKRE  
LT 2/24

STAND. COM. REP. NO. 823 -08

Honolulu, Hawaii

Feb 29, 2008

RE: H.B. No. 3178

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fourth State Legislature  
Regular Session of 2008  
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 3178 entitled:

"A BILL FOR AN ACT RELATING TO CIVIL PENALTIES FOR VIOLATIONS ON PUBLIC LANDS,"

begs leave to report as follows:

The purpose of this bill is to protect Hawaii's public lands by:

- (1) Establishing that any person causing an encroachment upon public lands is liable for administrative costs incurred by the Department of Land and Natural Resources (DLNR) and for payment of damages;
- (2) Increasing the current fine and establishing greater fines for subsequent violations for any person engaging in any prohibited use of public lands, conducting a prohibited activity on public lands, or violating other provisions of chapter 171, Hawaii Revised Statutes, for which a fine is not specified;
- (3) Authorizing the Board of Land and Natural Resources to, in addition to other remedies for natural resource damage or theft, set, charge, and collect a fine that is appropriate considering the value of the natural resource that is damaged or the subject of the theft; and

HB3178 HSCR FIN HMS 2008-2386



State of Hawaii  
House of Representatives  
The Twenty-fourth Legislature

**HSCB-823-08**

**Record of Votes of the Committee on Finance**

<b>Bill/Resolution No.:</b> <b>HB 3178</b>	<b>Committee Referral:</b> <b>FIN</b>	<b>Date:</b> <b>2-21-2008</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
<b>The recommendation is to:</b> <input checked="" type="checkbox"/> Pass, unamended (as is) <input type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
FIN Members	Ayes	Ayes (WR)	Nays	Excused
1. OSHIRO, Marcus R. (C)	✓			
2. LEE, Marilyn B. (VC)	✓			
3. AWANA, Karen Leinani	✓			
4. BELATTI, Della Au	✓			
5. BROWER, Tom	✓			
6. CARROLL, Mele	✓			
7. HANOHANO, Faye P.	✓			
8. HAR, Sharon E.	✓			
9. KARAMATSU, Jon Riki	✓			
10. MAGAOAY, Michael Y.	✓			
11. MANAHAN, Joey	✓			
12. MIZUNO, John	✓			
13. NAKASONE, Bob	-			✓
14. RHOADS, Karl	✓			
15. SAGUM, Roland D., III	✓			
16. TOKIOKA, James Kunane	✓			
17. MEYER, Colleen Rose	✓			
18. PINE, Kymberly Marcos	✓			
19. WARD, Gene, Ph.D.	✓			
<b>TOTAL (19)</b>	18	0	0	1
<b>The recommendation is:</b> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <div style="text-align: center; font-size: 0.8em;">committee acronym(s)</div>				
<b>Vice Chair's or designee's signature:</b> <u>Manif Blue</u>				
<b>Distribution:</b> Original (White) – Committee      Duplicate (Yellow) – Chief Clerk's Office				

H.B. NO. 3178

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## A BILL FOR AN ACT

RELATING TO CIVIL PENALTIES FOR VIOLATIONS ON PUBLIC LANDS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The State must remain vigilant in its duty to  
2 protect Hawaii's natural resources for the benefit of all of its  
3 residents and future generations. The legislature finds that in  
4 recent years, there has been an increase in the intentional  
5 violation of and blatant disregard for state natural resources  
6 laws. Consequently, the State has been under considerable  
7 strain in fulfilling that obligation, due to ineffective  
8 enforcement tools, limited resources, and a shortage of  
9 enforcement personnel. Existing civil penalties for most  
10 violations are nominal and do not appear to deter such behavior  
11 effectively.

12       Increasing penalties for civil violations of the State's  
13 natural resources laws is an effective means for deterring  
14 unlawful behavior by imposing serious consequences for such  
15 violations. The purpose of this Act is to increase civil  
16 penalty fine amounts for violations on public lands and to  
17 clarify penalties for encroachment on public lands.

being disposed of, the terms of sale, lease, license,  
or permit, and the qualifications of any person to  
draw, bid, or negotiate for public land;

(7) Reduce or waive the lease rental at the beginning of  
the lease on any lease of public land to be used for  
any agricultural or pastoral use, or for resort,  
commercial, industrial, or other business use where  
the land being leased requires substantial  
improvements to be placed thereon; provided that such  
reduction or waiver shall not exceed two years for  
land to be used for any agricultural or pastoral use,  
or exceed one year for land to be used for resort,  
commercial, industrial, or other business use;

(8) Delegate to the chairperson or employees of the  
department of land and natural resources, subject to  
the board's control and responsibility, such powers  
and duties as may be lawful or proper for the  
performance of the functions vested in the board;

(9) Utilize arbitration under chapter 658A to settle any  
controversy arising out of any existing or future  
lease;

H.B. NO. 3178

1            (C) If required by the board, restore the land to its  
2            original condition if altered and assume the  
3            costs thereof; [~~and (C) assume~~]

4            (D) Assume such costs as may result from adverse  
5            effects from such restoration; and

6            (E) Be liable for administrative costs incurred by  
7            the department and for payment of damages;

8            (13) Set, charge, and collect interest and a service charge  
9            on delinquent payments due on leases, sales, or other  
10           accounts. The rate of interest shall not exceed one  
11           per cent a month and the service charge shall not  
12           exceed \$50 a month for each delinquent payment;  
13           provided that the contract shall state the interest  
14           rate and the service charge and be signed by the party  
15           to be charged;

16           (14) Set, charge, and collect additional rentals for the  
17           unauthorized use of public lands by a lessee,  
18           licensee, grantee, or permittee who is in violation of  
19           any term or condition of a lease, license, easement,  
20           or revocable permit, retroactive to the date of the  
21           occurrence of the violation. Such amounts shall be  
22           considered delinquent payments and shall be subject to

H.B. NO. 3178

1 \$1,000 per day per violation may be assessed for  
2 each day in which the violation persists;

3 (C) Fined not more than \$10,000 per violation for a  
4 third or subsequent violation within five years  
5 of the last violation, provided that, after  
6 written or verbal notification from the  
7 department, an additional \$2,000 per day per  
8 violation may be assessed for each day in which  
9 the violation persists; and

10 (D) Liable for administrative costs and expenses  
11 incurred by the department and for payment for  
12 damages[7], including but not limited to natural  
13 resource damages.

14 In addition to the fines, administrative costs,  
15 and damages provided for hereinabove, for damage to or  
16 theft of natural resources, the board may also set,  
17 charge, and collect a fine that, in its discretion, is  
18 appropriate considering the value of the natural  
19 resource that is damaged or the subject of the theft.

20 In arriving at an appropriate fine, the board may  
21 consider the market value of the natural resource  
22 damaged or taken and any other factor it deems

H.B. NO. 3178

1 derived by the department from the industrial park or  
2 parks for which the bonds are issued;

3 (18) Reimburse the state general fund for debt service on  
4 general obligation bonds or reimbursable general  
5 obligation bonds issued by the State for purposes of  
6 this chapter; and

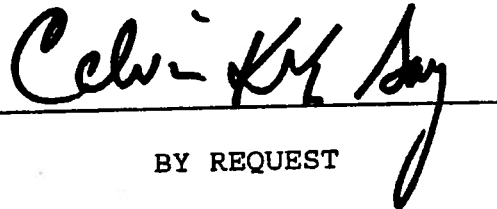
7 (19) Do any and all things necessary to carry out its  
8 purposes and exercise the powers granted in this  
9 chapter."

10 SECTION 3. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

13 SECTION 4. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon its approval.

16  
17 INTRODUCED BY:



BY REQUEST

JAN 22 2008

HB 3178

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO CIVIL  
PENALTIES FOR VIOLATIONS ON PUBLIC LANDS.

PURPOSE: To increase civil penalty fine amounts for  
violations on public lands and to clarify  
penalties for encroachment on public lands.

MEANS: Amend section 171-6, Hawaii Revised Statutes  
(HRS).

JUSTIFICATION: The State has a public trust obligation to  
protect Hawaii's natural resources for the  
benefit of all of its residents and future  
generations. There has been an increase in  
the intentional violation of and blatant  
disregard for state natural resources laws.  
Consequently, the Department has been under  
considerable strain in fulfilling that  
obligation, due to ineffective enforcement  
tools, limited resources, and a shortage of  
enforcement personnel.

Existing civil penalties for most violations  
are nominal and do not appear to be a  
serious deterrent for such behavior.  
Examples of such behavior include the  
operation of unpermitted surf schools and  
other unauthorized commercial activities on  
public beaches, operation of all-terrain  
vehicles on unencumbered or other restricted  
public lands, damage to archeological,  
historical, or geologic features, and  
destruction, defacing, or removal of natural  
features or natural resources on public  
lands. Increasing penalties for civil  
violations of the State's natural resources  
laws is an effective means for deterring  
unlawful behavior by imposing serious  
consequences for such violations.

Page 3

H03178

PPBS PROGRAM  
DESIGNATION:

LNR 101.

OTHER AFFECTED  
AGENCIES:

None.

EFFECTIVE DATE:

Upon approval.

**2008 LEGISLATIVE BILLS RELATED TO APPROPRIATIONS**

<b>MEASURE TITLE</b>	<b>BILL NO.</b>	<b>REPORT TITLE</b>	<b>DESCRIPTION</b>
Relating to Biosecurity	HB2501 HD2	Invasive Species; Biosecurity Program; Appropriation (\$)	Statutorily establishes, and appropriates funds for, the department of agriculture's biosecurity program.
Relating to Biosecurity	SB2850 SD2	Invasive Species; Biosecurity Program; Appropriation (\$)	Establishes and appropriates funds for the department of agriculture's biosecurity program. Appropriates funds for planning interim and permanent joint inspection facilities.
Relating to Biosecurity	HB2516 HD1	Joint Biosecurity Facilities; G.O. Bonds; Appropriations(\$)	Authorizes issuance of general obligation bonds and appropriates funds for the joint biosecurity inspection facilities at Honolulu International Airport and Honolulu harbor.
Relating to Inv Species	HB2843 HD2	Inv Sp: Fees; Freight	Imposes a 50 cent/1000# inspection fee on freight incoming to Hawaii by air or sea.